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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,	:	Case No. 2:05CV1058 PGC
Petitioner,	:	
v.	:	<b>REPORT AND RECOMMENDATION</b>
ALEX PARSINIA, President	:	District Judge Paul G. Cassell
of Creative Telecom Inc.,	:	Magistrate Judge David Nuffer
	:	
Respondent.	:	

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The United States of America filed a petition to enforce its September 9, 2005 IRS Summons ("the Summons") pursuant to 26 U.S.C. §§ 7402(b) and 7604(a). Judge Cassell issued an Order to Show Cause on January 3, 2006, which referred this matter to the undersigned under 28 U.S.C. § 636(b)(3) and directed the undersigned to hear the evidence and make a written recommendation to the District Court for proper disposition. United States v. Jones, 581 F.2d 816, 817 (10th Cir. 1978) (referring IRS summons enforcement to magistrate judge under 28 U.S.C. § 636(b)(3)).

In the Order to Show Cause ("OTSC"), Respondent was directed to file a written response supported by sworn affidavits to the United States' Petition to Enforce the Summons ("the Petition") within ten days of the OTSC being served upon him. The OTSC informed Respondent that only those issues raised in the written response and supported by sworn affidavits would be considered by the Court and that all allegations in the Petition not contested by the written response and sworn statements would be deemed admitted. See United States v. Balanced Fin. Mgmt., Inc., 769 F.2d 1440, 1444 (10th Cir. 1985). The OTSC also directed the undersigned to convene a hearing on January 30, 2006 at 9:00 a.m. to hear any arguments that would assist the undersigned in determining whether Respondent has shown cause. At this hearing, Respondent provided the United States with

information that purported to show that Respondent was not the person responsible to produce the summoned records on behalf of Creative Telecom, Inc. Consequently, the United States requested, and the undersigned ordered, that a status conference be convened on March 1, 2006 at 9:00 a.m. to determine whether further enforcement action could be taken against Respondent. At the March 1, 2006 status conference, Respondent stated that he was the person responsible to produce the records for the period of time stated in the Summons. Respondent has provided the United States some of the material requested in the Summons, but, as of March 1, 2006, had not provided testimony or produced copies of checks required by the Summons. At the hearing, Respondent agreed to cooperate by producing the missing information. Based on the arguments and representations presented in the Petition and at the March 1, 2006 hearing, the undersigned reports the following:

1. Respondent is the person responsible for producing the records required by the Summons.

2. Respondent failed to file any written response supported by sworn statements providing reasons why he should not be compelled to comply with the Summons.

3. At the March 1, 2006 hearing, Respondent agreed to provide to the IRS testimony and copies of checks required by the Summons.

Consequently, the undersigned recommends that:

1. The District Court find that Respondent is the person responsible for producing the records required by the Summons.

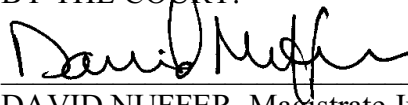
2. The District Court find that Respondent has failed to show cause why he should not be compelled to comply with the Summons; and

3. The District Court order Respondent to provide testimony and copies of checks required by the Summons on or before March 27, 2006 to the IRS, which is located at 50 South 200 East, Salt Lake City, Utah 84111.

Within 10 days after being served with a copy of this Report and Recommendation, a party may serve and file specific, written objections. A party may respond to another party's objections within 10 days after being served with a copy thereof. Pursuant to 28 U.S.C. § 636(b)(1)(C), the District Judge to whom this case is assigned shall make a de novo determination upon the record of any portion of the undersigned's disposition to which specific written objection has been made. The District Judge may accept, reject, or modify the recommended decision, receive further evidence, or re-commit the matter to the magistrate judge with instructions.

DATED this 1<sup>st</sup> day of March, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Nuffer", is written over a horizontal line.

DAVID NUFFER, Magistrate Judge  
United States District Court

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of the United States Attorney's Office for the District of Utah, and that a copy of the foregoing Report and Recommendation was mailed, postage prepaid, this 1st day of March, 2006 to the following:

Alex Parsinia  
1890 S. 3850 W.  
Salt Lake City, UT 84104

A handwritten signature in blue ink, appearing to be "Alex Parsinia", written over a horizontal line.